



DEPARTMENT OF LAW
OFFICE OF THE
Attorney General
STATE CAPITOL
Phoenix, Arizona 85007

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ATTORNEY GENERAL

March 22, 1978

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Ms. Lee Caldwell, Esq.
Deputy County Attorney
Yavapai County Attorney's Office
Prescott, Arizona 86301

Re: 78-60 (R78-7)

Dear Ms. Caldwell:

This Office has reviewed your school opinion dated January 9, 1978 concerning the sick leave policy adopted by the Prescott Unified School District.

We concur with your opinion.

Sincerely,

JOHN A. LASOTA, JR.
Acting Attorney General

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January 9, 1978

Dr. Ken Walker, Supt.
Prescott Unified School District
P.O. Box 1231
Prescott, AZ 86302

Re: Prescott Unified School District's Sick Leave Policy

Dear Dr. Walker:

This letter is in response to your questions regarding the sick leave policy for certified employees in the Prescott Unified School District.

It is my understanding that your present policy is to grant five days of conditional sick leave at the beginning of the school year to new employees and those with no accumulated sick leave. Each certified employee will then unconditionally earn sick leave at the rate of one day for each month of employment, for a total of ten days of sick leave annually.

In determining the validity of the current policy, it is important to note that this particular plan for granting sick leave differs factually from that discussed in Attorney General's Opinion R76-238. Due to the method of paying employees in the Prescott School District, as you have outlined in your letter, there is no pay withheld which could be used to cover conditional sick leave days. Thus, if an employee were to terminate prematurely having used any number of conditional sick leave days, it could result in an overpayment to the employee necessitating some kind of action by the school district to recover the appropriate amount from the employee. This potential situation essentially causes an extension of credit to be granted by the school district to the employee.

Dr. Ken Walker, Supt.
January 9, 1978
Page Two

Article IX, Section 7 of the Arizona Constitution forbids making a gift or loan of public money. However, as was noted in A.G.O. R76-238, ¹⁷⁶⁻¹⁷⁸ at p. 2-3:

"* * * not all grants or loans are violative of Article IX, Section 7, but only those which are not made for a 'public purpose', with the governing board having broad discretion to determine what amounts to a public purpose."

The essential question, therefore, is whether the particular sick leave policy serves a valid public purpose. Initially, it is important to recognize, as did A.G.O. ¹⁷⁶⁻¹⁷⁸ 76-238, the school board itself has broad discretion in determining what is a public purpose. The Arizona Supreme Court quoted with approval in City of Glendale v. White, 67 Ariz 231, 237 (1948), the following statement from a California case:

" The question as to whether the permormance of an act or the accomplishment of a specific purpose constitutes a 'public purpose,' and the method by which such action is to be performed or purpose accomplished, rests in the judgment of the city council, and the judicial branch will not assume to substitute its judgment for that of the governing body unless the latter's exercise of judgment or discretion 'is shown to have been unquestionably abused.' * * *"

As long as the sick leave policy for certified employees can be construed as "promoting education" [see Prescott Community Hospital v. Prescott Unified School District #1, 57 Ariz 492, 494 (1941)], the policy serves a valid public purpose and is not in violation of the Arizona Constitution.

It is the opinion of this office that the sick leave policy, which is one of the fringe benefits granted to employees in consideration for their promises to perform services for the school distrit, legitimately promotes education and cannot be considered to constitute an abuse of discretion by the school board.

In answer to your second question regarding a grant of an additional five days conditional sick leave in January, this too would be permissible under the same rationale as set forth above. This opinion must be read keeping in mind the complete sick leave policy, as well as other fringe benefits, must have been adopted by the school board prior to the time the school district's employees have entered into their contracts for the year for which the policy is applicable. If the policy was adopted after the contracts were completed, it would not be in consideration for services to the school district, and would thusly constitute an invalid gift.

Dr. Ken Walker, Supt.
January 9, 1978
Page Three

Should you have any questions regarding this opinion, please let me know.

Very truly yours,

Lee Caldwell

Ms. Lee Caldwell
Deputy County Attorney

LC:j

cc:
David Rich
Office of the Attorney General
State Capitol Building
Phoenix, AZ 85007

Dr. Gene Hunt, Supt.
Yavapai County Schools